

June 6, 2012

**Via Electronic Mail and FedEx**

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**Re: Asia Consultancy Group, Filer ID: 829069  
Request for Reconsideration of Previous Guidance**

On behalf of Asia Consultancy Group ("ACG" or "the Company"), this letter responds to your email dated March 8, 2012. As you know, in January we inquired of USAC whether ACG could voluntarily contribute to the Universal Service Fund ("USF") despite exemption due to *de minimis* status.<sup>1</sup> As a *de minimis* provider (and non-contributor), per the Form 499-A instructions, ACG's suppliers are required to treat revenues from ACG as USF-eligible and can pass through USF fees on these revenues to the Company.<sup>2</sup> In our correspondence, we expressed ACG's concern that these indirect contributions on its exempt revenues will exceed its contribution obligations as a direct contributor. You responded that due to the "administrative burden in collecting and processing contributions from *de minimis* carriers," USAC could not accept "voluntary contributions" from USF contributors qualifying for the *de minimis* exemption.

In February, our firm sent an email expressing concern that by this explanation, USAC might be overlooking applicable FCC rules and policy directives relating to the *de minimis* exemption. In particular, we pointed to language in the Commission's Fourth Order on Reconsideration authorizing the Commission to consider both the Administrator's and contributors' costs in determining contribution obligations.<sup>3</sup> In response, on March 8<sup>th</sup>, you concluded that "USAC cannot accept voluntary universal service support mechanism contributions from carriers." You noted that the "Fourth Reconsideration Order declined to exclude from the contribution requirement all entities that claim compliance costs in excess of contribution amounts."

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<sup>1</sup> Note that as of the date of this letter, ACG anticipates becoming a direct contributor by Q3 2012 due to increased USF-eligible revenues. Nonetheless, ACG wishes to clarify its reporting obligations and rights in the event that the Company does not meet projections and remains *de minimis*.

<sup>2</sup> See Instructions to 2012 Telecommunications Reporting Worksheet, Form 499-A at 22.

<sup>3</sup> *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd. 5318, ¶ 293 (1997).

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As you know, the Commission recently released an FNPRM seeking comment on USF contribution reform proposals.<sup>4</sup> In the FNPRM, the FCC made statements that conflict with USAC's previous guidance.

First, paragraph 217 provides:

The *de minimis* exemption is meant to relieve small businesses of the cost of complying with our contribution rules when that cost would outweigh the contributions we could expect from the provider.<sup>5</sup>

This runs contrary to USAC's position that the FCC has not excluded from the contribution requirement all entities that claim compliance costs in excess of contribution amounts. The FCC's statement shows that the *de minimis* exemption is intended to protect small businesses from ALL contribution obligations, i.e. to exempt them from the "cost of compliance", when that cost would outweigh such providers' expected contributions. Indirect contributions are entirely inconsistent with this policy.

Additional language in the FNPRM clarifies that indirect contributions are not consistent with the Commission's rules. For example, paragraph 194 provides:

Also, carriers that only have international revenues, but have no interstate revenues, are not currently required to contribute to the Fund.<sup>6</sup>

This language does not include a caveat regarding "direct" contribution, but rather confirms in absolute terms that carriers with only international revenues are not required to contribute AT ALL. As such, indirect contribution is completely at odds with this directive from the FCC.

Based upon these unequivocal statements by the FCC in the FNPRM, we urge USAC to reconsider its decision/guidance. ACG is also an "international only" service provider and therefore exempt as articulated in the FCC's rules and the FNPRM. As both a *de minimis* provider and international only carrier, per the FCC's rules and express language of the FNPRM, ACG should be exempt from all USF fees. If ACG is *de minimis*, it will not appear as a direct contributor in the FCC's database. As such, its suppliers will assess pass-through USF fees on the Company. However, current FCC rules and policies, as confirmed by the FCC's express language in the FNPRM, support the conclusion that USAC has no authority to require ACG to make USF contributions indirectly through supplier pass-through surcharges. Instead, ACG and similarly-situated "international only" and/or "de minimis" service providers should be afforded the opportunity to avoid USF contributions – either direct or indirect -- consistent with FCC rules and policies, as confirmed by the FNPRM.

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<sup>4</sup> *In the Matter of Universal Service Contribution Methodology, a National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, FCC 12-46 (rel. Apr. 30, 2012) ("USF FNPRM").

<sup>5</sup> USF FNPRM at ¶ 217.

<sup>6</sup> *Id.* at ¶ 194.

USAC's previous guidance on this matter is inconsistent with this result because this guidance would continue to foist indirect contribution obligations upon ACG, even though ACG should be exempt from contributions for two independent reasons - either because it provides "international only" services or because its cost of compliance exceeds its anticipated contributions to the fund. ACG requests that USAC reconsider its previous guidance in light of the FCC's confirmation of its rules and policies in the FNPRM.

As you know, USAC is bound by its FCC charter to do no more than to implement and administer FCC rules, regulations and policies. The FCC clearly articulated these rules, regulations and policies regarding the "international only" and "de minimis" exemptions in the FNPRM. Perpetuation of the current disconnect between USAC's implementation and administration of the FCC's intentions is not tolerable and must be addressed expeditiously. USAC need not await FCC guidance to correct its policies.

Should you have any further questions, kindly contact the undersigned at [jsm@commlawgroup.com](mailto:jsm@commlawgroup.com) or (703) 714-1313.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "JSM", with a long horizontal flourish extending to the right.

Jonathan S. Marashlian